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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,469	08/20/2004	Frederic Fortin	09955.0047-00000	4004

22852 7590 10/07/2008

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EXAMINER	
WOODALL, NICHOLAS W	

ART UNIT	PAPER NUMBER
3775	

MAIL DATE	DELIVERY MODE
10/07/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/505,469	FORTIN ET AL.	
	Examiner	Art Unit	
	Nicholas Woodall	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 March 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *20-34* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *20-34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *20 August 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☒ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This action is in response to applicant's amendment received on 10/23/2007.

Priority

2. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in France on 07/18/2001. It is noted, however, that applicant has not filed a certified copy of application FR 01/09628 as required by 35 U.S.C. 119(b).

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 20-34 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 13-27 of copending Application No. 10/760,075. Although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between claims

20-34 of the current application and claims 13-27 of the copending application lies in the fact that the claims of the current application include many more elements and is thus much more specific. Thus the invention of the current application is in effect a "species" of the "generic" invention of claims 13-27 of the copending application. It has been held that the generic invention is "anticipated" by the species. See In re Goodman, 29 USPQ2d 2010 (Fed. Cir. 1993). Since claims 13-27 of the copending application are anticipated by claims 20-34 of the current application, the claims of the copending application are not patentably distinct from the claims of the current application

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 20, 21, 23-25, 28, and 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Alby (U.S. Patent 6,241,730).

Alby discloses a device comprising a cylindrical body portion (4), a first rod portion (4A), a second rod portion (4Ba, 11, etc.), a ring shaped first dampening member (first element 12), and a ring shaped second dampening member (second element 12). The cylindrical body portion includes a first end, a second end including a circular opening and a cap (9). The first rod portion extends from the first end of the

cylindrical body portion in a first direction from the cylindrical body portion and includes a threaded end engaged with a threaded portion of the cylindrical body portion. The second rod portion includes a first elongate body (4Ba) and an enlarged end portion (11) positioned within the cylindrical body portion, wherein the first elongate body extends in a second direction opposite the first direction and passes through the opening. The opening has a width less than a width of the enlarged end portion but greater than a width of the first elongate body to allow the first elongate body to laterally bend, i.e. rotate relative to, with respect to the cylindrical body portion. The first dampening member is positioned between the enlarged end portion and the first end of the cylindrical body portion. The second dampening member is positioned between the enlarged end portion and the second end of the cylindrical body portion. The cap may comprise an external threading engaged with an internal threading at the second end of the cylindrical body portion (column 3 lines 53-55). Regarding claims 28 and 30-32, Alby discloses a method of using a device as discussed above.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 22, 26, 27, 29, 33, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alby (U.S. Patent 6,241,730).

Alby discloses the invention as claimed except for the cap including a threaded inner region, the opening in the cylindrical body portion is eccentrically located, and the opening having an oblong shape. Regarding the cap including an inner thread region, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Alby wherein the cap includes a threaded inner region, since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. In re Einstein, 8 USPQ 167. Regarding the opening being eccentrically located, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Alby wherein the opening is eccentrically located, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70. Regarding the opening having an oblong shape, it would have been an obvious matter of design choice to one skilled in the art at the time the invention was made to provide the device of Alby wherein the opening has an oblong shape, since applicant has not disclosed that such solve any stated problem or is anything more than one of numerous shapes or configurations a person ordinary skill in the art would find obvious for the purpose of providing a forming edge in the heating portion or clamp. In re Dailey and Eilers, 149 USPQ 47 (1966).

Response to Arguments

9. Applicant's arguments with respect to claims 20-34 have been considered but are moot in view of the new ground(s) of rejection. The examiner has provided new grounds of rejection as necessitated by the amendment making this office action **FINAL**.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is (571)272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas Woodall/
Examiner, Art Unit 3733
/Eduardo C. Robert/
Supervisory Patent Examiner, Art Unit 3733